

Senator Jeff Sessions
Questions for the Record
Mary L. Smith

1. You are nominated to be the Assistant Attorney General for the Tax Division, but you have a surprising lack of experience in tax law. I am very concerned about your lack of experience in this area. Based on the information contained in your questionnaire and your hearing testimony, it appears that you have only worked on tax issues on two limited occasions, in your position as in-house counsel at Tyco and during your tenure in the Clinton Administration. I want to give you a chance to supplement the record.

- a. Please list any advanced degrees you have pursued in tax law.

I have not pursued any advanced degrees in tax law.

- b. Please list all Continuing Legal Education credits you have taken relating to tax law.

At present, I do not have any Continuing Legal Education credits relating to tax law. I plan to do so on a going-forward basis.

- c. Please list any speeches or presentations you have given or articles you have written on tax law issues.

I have not given any speeches or presentations or written any articles on tax law issues.

- d. Please list any awards you have received specifically for your work on tax law.

I have not received any awards specifically related to tax law.

- e. Please describe the specific tax issues that you handled during your tenure in the Clinton Administration.

While in the White House, I worked closely with the National Economic Council on legislation that would put tribal governments on par with state and local governments under the Federal Unemployment Tax Act (FUTA). I spent many months working with the Treasury Department, Congressional leaders, and the National Economic Council on addressing this disparity in tax policy between tribal governments and state

governments. The end result was that the FUTA language was included in the final FY 2001 omnibus appropriations bill.

2. At your hearing, I asked you about your experience with tax law and, in response, you stated that while you were in-house counsel at Tyco, you worked on tax issues while working on “multi-district litigation ... rising out of their Kozlowski era.” Can you tell me specifically which sections of the Internal Revenue Code were involved in that litigation and describe their relevance to the case?

While serving as in-house counsel at Tyco, I dealt with a number of tax issues. I interacted with the Tyco tax department on a variety of issues, including the tax treatment of several items, such as those involving theft loss and charitable contributions. See, e.g., 26 U.S.C. §§ 165 and 170. I also worked with the tax department on issues which dealt with the tax treatment of certain items arising from corporate acquisitions, as well as the proper classification of acquisition expenses. See, e.g., 26 U.S.C. § 269. I also advised the tax department on responding to IRS subpoenas. In addition, two of the Company’s Senior Vice Presidents of Tax were either witnesses or potential witnesses in the multi-district securities litigation for which I was responsible. One of the former heads of Tyco’s tax department, R. Scott Stevenson, ultimately pled guilty to failing to report more than \$170 million in U.S. income on Tyco’s tax returns and was sentenced to three years in prison. Additionally, I interacted with the tax department on issues involving state tax payments for various former senior executives. Finally, I interacted with the tax department regarding the approximately \$3 billion settlement of the Tyco securities litigation and issues involving its tax treatment. See, e.g., 26 U.S.C. § 162.

- a. While litigating that case, what percentage of your time was spent working on tax issues?

Approximately 5 percent of my time was spent on tax issues.

3. A large percentage of the Tax Division’s cases are criminal cases. Please describe your criminal law experience.

Throughout my career, I have worked on criminal matters. While in law school, I served as an intern in United States Attorney’s Office for the Northern District of Illinois. During my clerkship in the Eleventh Circuit, I worked on criminal cases. I worked on a habeas

case arising out of a criminal matter while at a law firm in Chicago. During my time at Skadden, Arps, Slate, Meagher & Flom LLP, I worked on a murder case on a pro bono basis. When I was at Tyco, I interacted and cooperated with the Manhattan District Attorney's Office on a regular basis regarding the convictions of Tyco's former CEO, L. Dennis Kozlowski, and former CFO, Mark Swartz, as well as supervising the filing of pleadings in the criminal proceedings to protect Tyco's interests.

4. Have you ever practiced before the Tax Court? If so, please describe the case(s) and your role in the case(s)?

I have not practiced before the Tax Court. The Tax Division represents the United States and its officers in civil and criminal litigation arising under the internal revenue laws in all courts except the United States Tax Court.

5. One area of focus of the Tax Division is the prosecution of illegal tax shelters of corporations. Have you ever worked on any cases or matters involving tax shelters?

I have not worked on cases or matters involving tax shelters.